

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lily Kim	Team: Squad #6	CCRB Case #: 201908369	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/22/2019 12:30 PM	Location of Incident: § 87(2)(b); over the phone	Precinct: 24	18 Mo. SOL 3/22/2021	EO SOL 11/6/2021	
Date/Time CV Reported Mon, 09/23/2019 10:47 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/23/2019 10:47 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Carnevale	06603	950161	024 PCT
2. An officer			024 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brian Treuhaft	30390	952491	032 PCT
2. POM Raymond Castro	05387	963444	024 PCT
3. POM Jose Rodriguez	27982	939341	024 PCT
4. POF Nelly Sayago	03568	957138	024 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM John Carnevale	Abuse: Police Officer John Carnevale entered § 87(2)(b) in Manhattan.	
B.POM John Carnevale	Abuse: At § 87(2)(b) in Manhattan, Police Officer John Carnevale threatened to remove § 87(2)(b) to the hospital.	
C.POM John Carnevale	Off. Language: At § 87(2)(b) in Manhattan, Police Officer John Carnevale made remarks to § 87(2)(b) based on perceived mental health status.	
D. An officer	Abuse: Over the phone, an officer did not process § 87(2)(b)'s complaint regarding officers.	

Case Summary

On September 23, 2019, § 87(2)(b) filed the following complaint over the phone with the CCRB.

On September 22, 2019 at approximately 10:00 a.m., § 87(2)(b) was inside her apartment in a § 87(2)(b) located at § 87(2)(b) in Manhattan when she got into an argument with her next-door neighbor, § 87(2)(b). After the interaction, § 87(2)(b) returned to her apartment and § 87(2)(b) called 911. PO John Carnevale of the 24th Precinct and PO Brian Treuhaft of the 32nd Precinct (who worked out of the 24th Precinct) responded to the call. At approximately 12:30 p.m., § 87(2)(b)'s front door was opened with a key and PO Carnevale entered the apartment (**Allegations A—Abuse of Authority, § 87(2)(g)**). § 87(2)(b) spoke with PO Carnevale, who stated that if he had to come back again, he was going to call an ambulance to take her to the “crazy home” (**Allegation B—Abuse of Authority, § 87(2)(g)**; **Allegation C—Offensive Language, § 87(2)(g)**). Immediately after the incident, § 87(2)(b) called the 24th Precinct, to file a complaint about the officers. The individual who answered the phone told § 87(2)(b) that she could file a complaint downtown and did not take her report (**Allegation D—Abuse of Authority, § 87(2)(g)**). PO Raymond Castro and PO Jose Rodriguez of the 24th Precinct also responded to the initial 911 call and were present for the incident. § 87(2)(b) was not arrested or issued a summons.

Body-worn camera and building surveillance video were obtained during the investigation.

Findings and Recommendations

Allegation A—Abuse of Authority: Police Officer John Carnevale entered § 87(2)(b) in Manhattan.

An attorney was consulted for this allegation.

It is undisputed that § 87(2)(b) threw water from a water bottle at § 87(2)(b). § 87(2)(b) then called 911, and the call was dispatched as a 10-34 assault. Upon arrival, PO Carnevale and PO Treuhaft spoke with § 87(2)(b) and two security guards in the lobby and determined that since the water was from a water bottle, the incident fell to the level of harassment, rather than assault.

At the 2:00 minute mark in PO Carnevale's BWC footage, PO Carnevale asked § 87(2)(b) if she needed an ambulance and she said no. She stated that § 87(2)(b) threw water at her and banged on the walls. At the 5:56 mark, PO Carnevale stated, “I think this is that dude with no pants last time,” and PO Treuhaft agreed. At the 6:10 mark in PO Carnevale's BWC footage, PO Carnevale stated that they should get the keys since § 87(2)(b) was not responding to their knocking. The television was on loudly in the background. PO Treuhaft and PO Carnevale discussed whether this is an EDP case, given that it is harassment. PO Treuhaft disagreed with PO Carnevale and stated that they should just prepare a complaint report (UF-61) for § 87(2)(b) and leave. PO Carnevale stated that he would rather send the person to the hospital before the situation escalates to something violent. At the 6:48 mark, PO Treuhaft emphasized again that the water was just from a water bottle, and PO Carnevale responded that they just need to make sure. At the 7:48 mark, PO Carnevale told PO Castro and PO Rodriguez, “But if he keeps messing around, I don't want to come back here in 20 minutes.” At the 10:35 mark, PO Carnevale opened the door to § 87(2)(b) with a key and entered. § 87(2)(b) questioned why PO Carnevale entered her apartment. (**BR 01**).

At the 3:32 mark in PO Rodriguez's BWC footage, PO Carnevale opens the door to Apt. 7F with a key and walks into the apartment. PO Treuhaft took one or two steps into the apartment behind PO Carnevale. **(BR 02)**.

Event #§ 87(2)(b) noted that at 12:33 p.m., a 911 caller named § 87(2)(b) reported that § 87(2)(b) threw hot water on her. § 87(2)(b) refused medical attention and stated that she would wait in the lobby. Unit 24C2-2, identified as PO Carnevale and PO Treuhaft, arrived at 12:38 p.m. PO Rodriguez and PO Castro responded shortly after.

§ 87(2)(b) testified **(BR 03)** that after her dispute with § 87(2)(b) she remained inside her apartment located at § 87(2)(b) in Manhattan. § 87(2)(b) watched television in bed, when officers knocked on her door for approximately two minutes. She did not hear any statements made at the door. § 87(2)(b) did not expect anyone other than her social worker at 3:00 p.m., so she did not answer the door. § 87(2)(b)'s door was opened with a key. Due to her vantage point, she could only see PO Carnevale enter her apartment. § 87(2)(b) did not consent to the entry.

§ 87(2)(b) located at § 87(2)(b) in Manhattan, provided a phone statement If officers request keys, security guards will not deny access to them. § 87(2)(b) believed that if an officer requested a key, it would be because the circumstances warranted it, such as an individual potentially causing harm to themselves or another cause for concern. To § 87(2)(b) knowledge, this policy is not documented.

PO Carnevale testified **(BR 06)** that § 87(2)(b) is a § 87(2)(b). The building is staffed with security guards in the lobby. If officers need access to a residence, security has copies of all the keys and will provide a key in emergency situations, such as when there is an individual who is emotionally ill. PO Carnevale did not know that security provided officers with keys until he spoke with them on September 22, 2019. PO Carnevale responded to two previous calls involving § 87(2)(b). During one call, EMS was called to remove § 87(2)(b) to the hospital because she was incoherent and appeared to have some kind of mental illness, but she was not removed. PO Carnevale did not recall any details regarding the second call other than that it was an EDP call, in which he was a back-up officer. On September 22, 2019, PO Carnevale responded to an assault in progress call at § 87(2)(b). In the lobby, PO Carnevale and PO Treuhaft spoke with § 87(2)(b) who stated that the water was thrown at her from a water bottle and was not hot. § 87(2)(b) stated that § 87(2)(b) banged on the walls and yelled. PO Carnevale observed that § 87(2)(b) was covered in water. Two unidentified security guards confirmed that they saw water from a water bottle in the surveillance footage and asked the officers to speak with § 87(2)(b). At that point, the job was determined to be harassment, rather than assault. PO Carnevale went upstairs to § 87(2)(b)'s apartment with PO Treuhaft. PO Carnevale knocked loudly on § 87(2)(b)'s door, and tried the handle, which was locked. § 87(2)(b) did not respond, and PO Carnevale could only hear the television turned on loudly in the apartment. PO Carnevale and PO Treuhaft then went downstairs and obtained the key to § 87(2)(b)'s apartment from security because PO Carnevale did not know whether § 87(2)(b) was hurt, needed medical attention, or was suffering from a mental episode. PO Carnevale needed to speak with § 87(2)(b) to confirm that she was alright. After obtaining the keys with security downstairs, he returned upstairs with PO Treuhaft and a female security guard. PO Carnevale used the key to open the door and took a few steps into the apartment because there was a small hallway that blocked his view of the apartment. PO Treuhaft stood behind PO Carnevale and did not enter the apartment.

PO Treuhaft's statement (**BR 07**) was generally consistent with PO Carnevale's, with the exception of the following. When a 911 call is received at the location, officers typically speak with security first to obtain any additional information. PO Treuhaft knew that security had access to keys prior to this incident. To his knowledge, security had the requisite authority to grant such access. On September 22, 2019, § 87(2)(b) informed officers that § 87(2)(b) threw water from a water bottle at her and stated that she did not need medical attention. Keys are provided by security based upon the situation, such as if the individual is definitively home at the time. When PO Carnevale entered the residence, PO Treuhaft stood behind PO Carnevale and did not think that he entered the residence, but he may have taken one or two steps inside to make sure that PO Carnevale was alright. As PO Treuhaft expressed that he disagreed with the entry into the residence and solely to ensure PO Carnevale's safety, no entry allegation was pleaded against him.

The primary duty of all members of service is to preserve human life. The safety of all persons involved is paramount in cases involving emotionally disturbed persons. The Patrol Guide defines an emotionally disturbed person as a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer believes is likely to result in serious injury to himself or others. Patrol Guide Section 221-13 (**BR 08**). The "emergency doctrine" is comprised of three elements: (1) the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property and this belief must be grounded in empirical facts; (2) the search must not be primarily motivated by an intent to arrest and seize evidence; and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. People v. Doll, 21 N.Y.3d 665 (2013) (**BR 09**).

According to his statement and his BWC footage, PO Carnevale wanted to enter § 87(2)(b)'s residence because he was concerned about not being able to communicate with § 87(2)(b) and wanted to ensure that the incident did not escalate into a violent nature. In PO Carnevale's statement, he stated that he was not sure about § 87(2)(b)'s medical or mental status at the time and wanted to make sure she was alright. However, the BWC confirmed that PO Treuhaft disagreed with PO Carnevale and told PO Carnevale they could just fill out the complaint report for harassment and leave. However, at the time the officers responded, § 87(2)(b) was in her apartment and not in current contact with § 87(2)(b). PO Carnevale did not hear anything besides the television when he responded to the call. § 87(2)(g)

§ 87(2)(b) PO Carnevale testified that he responded to two EDP or EMS related calls for § 87(2)(b) in the past and also believed she had a mental illness. However, he confirmed that on neither of these occasions was § 87(2)(b) removed to the hospital. § 87(2)(g)

§ 87(2)(g)

Allegation B—Abuse of Authority: At § 87(2)(b) in Manhattan, Police Officer John Carnevale threatened to remove § 87(2)(b) to the hospital.

Allegation C—Offensive Language: At § 87(2)(b) in Manhattan, Police Officer John Carnevale made remarks to § 87(2)(b) based on perceived mental health status.

It is undisputed that when PO Carnevale entered § 87(2)(b)'s apartment, they had a short conversation about what had happened.

At the 11:30 mark in PO Carnevale's BWC footage, PO Carnevale stated, "If I got to come back here, I'm gonna send you to the hospital."

§ 87(2)(b) testified that when PO Carnevale entered her apartment, he told her to stay away from her neighbor. PO Carnevale stated that if he had to come back again, he was going to call an ambulance to take her to the "crazy home." § 87(2)(b) interpreted this statement as a threat. § 87(2)(b) was calm throughout the interaction.

PO Carnevale testified that when he entered § 87(2)(b)'s apartment, PO Carnevale told § 87(2)(b) that he entered to check if she was alright. As previously discussed, PO Carnevale did not know if § 87(2)(b) was emotionally disturbed or injured prior to the entry. During the conversation, § 87(2)(b) seemed calm and coherent. She did not seem to be emotionally disturbed or a potential threat to herself or others. At that point, there was no reason to remove § 87(2)(b) to the hospital. PO Carnevale told § 87(2)(b) that if she acted in the same manner again, he may have to come back and she may have to be removed to the hospital. During his interview, PO Carnevale explained that if he had to come back, there was something wrong and he would call an ambulance, potentially to take her for psychiatric evaluation. PO Carnevale did not say that if he had to come back, he would call an ambulance to take § 87(2)(b) to the "crazy home" and did not use any offensive language toward § 87(2)(b).

PO Treuhaft's statement was generally consistent with PO Carnevale's. He testified that he did not recall whether PO Carnevale said anything to § 87(2)(b) about sending her to the hospital or whether PO Carnevale told § 87(2)(b) that if he needed to come back, he would call an ambulance. PO Treuhaft did not recall whether PO Carnevale told § 87(2)(b) that if they needed to come back, he would call an ambulance to take her to the "crazy home." PO Treuhaft did not recall whether PO Carnevale made any remarks to § 87(2)(b) based upon her perceived mental health status.

The Patrol Guide defines an emotionally disturbed person as a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer believes is likely to result in serious injury to himself or others, Patrol Guide Section 221-13 (BR 08).

Based upon PO Carnevale's BWC footage and testimony, PO Carnevale told § 87(2)(b) that if he had to come back later, he would send her to the hospital. By this point during the entry, PO Carnevale and PO Treuhaft established that § 87(2)(b) was in a stable emotional state and did not need to be taken to the hospital. PO Carnevale did not provide any further explanation when he stated that if he was called back, he would send § 87(2)(b) to the hospital. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D—Abuse of Authority: Over the phone, an officer did not process § 87(2)(b)'s complaint regarding officers.

§ 87(2)(b) testified that immediately following the incident, she searched on Google for the police department in the Upper West Side and called the 100th Precinct. The investigation determined that she likely called the 24th Precinct on 100th Street in Manhattan. § 87(2)(b) spoke with a female but could not provide any additional information about the individual. § 87(2)(b) asked to file a complaint and the individual responded that she could file a complaint downtown. § 87(2)(b) then disengaged the call.

PO Nelly Sayago of the 24th Precinct worked as the telephone switchboard operator on the date of the incident. PO Sayago testified (**BR 10**) that she did not recall the incident. PO Sayago explained that the T/S operator's role is to answer all phone calls. However, if the T/S operator steps away for any reason, someone else may answer the phone. PO Sayago trains two cadets, § 87(2)(b) and § 87(2)(b). It is likely that they worked on that day. Typically, PAA Alice Huang worked during that tour, but PO Sayago could not recall which PAA worked that day. The PAA, cadets, or any officer passing through can answer the phone. PO Sayago would never state that someone could file a complaint downtown. She always reads from a CCRB poster which is posted near the phone and which lists various ways civilians can file CCRB complaints.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to four CCRB complaints and has been named as a victim in thirteen allegations (**BR 11**).
 - § 87(2)(b)
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- PO Carnevale has been a member-of-service for eight years and has been a subject in three CCRB complaints and four allegations, of which one was substantiated:
 - Case #201312000 involved a substantiated allegation of premises entered and/or searched against PO Carnevale. The Board recommended formalized training, and the NYPS imposed formalized training.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in NYC (**BR 12**).
- As of March 5, 2020, the NYC Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**BR 13**).

Squad No.: 6

Investigator:	Investigator Lily Kim	7/8/2020
	Signature	Print Title & Name
		Date

Squad Leader: Jessica Peña IM Jessica Peña 7/8/2020
Signature Print Title & Name Date

Reviewer: _____

Signature Print Title & Name Date